

RAILROAD EQUIPMENT LEASE dated as of July 15, 1970 between Cuyuna Realty Company, a Minnesota corporation, having an address at 176 East 5th Street, St. Paul, Minnesota 55102, (herein called "Lessor"), and Burlington Northern Inc., a Delaware corporation having an address at 176 East 5th Street, St. Paul, Minnesota 55101 (herein called "Lessee").

RECORDATION NO. 5802 Filed & Recorded

AUG 18 1970 3 00 PM

INTERSTATE COMMERCE COMMISSION

Lessor has purchased certain items of railway equipment described in Schedule A hereto (herein collectively called the "Equipment"). Each item of Equipment has been constructed in accordance with specifications approved by Lessee.

Lessee for the efficient conduct of its business is in need of the Equipment for use in interstate commerce and desires to lease from Lessor the Equipment at the rental, for the term and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants to be kept and performed by Lessee, Lessor hereby leases to Lessee and Lessee leases from Lessor the Equipment upon the following terms and conditions:

SECTION 1. Delivery and Acceptance of Equipment.

Lessor shall deliver each item of Equipment to, and such items of Equipment shall, after inspection by Lessee and determination of conformity to the applicable specifications, be accepted by, Lessee hereunder at the place and at the time specified by Lessor by delivering a certificate of acceptance to Lessor. Thereafter, such items of Equipment shall be subject to all the terms and conditions of this lease.

SECTION 2. Term of Lease. The term of this Lease with respect to each item of Equipment shall begin on the date of the delivery by Lessor to and acceptance by Lessee of such item of Equipment hereunder, and shall terminate on the earlier to occur of (i) the sale by Lessor of such item of Equipment to the Trustee of Burlington Northern Inc. Equipment Trust, Series 1, after the Agreement evidencing such Trust shall have been duly recorded pursuant to Section 20c of the Interstate Commerce Act or (ii) September 30, 1970.

SECTION 3. Rentals. Lessee agrees to pay to Lessor on the termination date of this Lease basic rent in respect to each item of Equipment leased hereunder in an amount equal to \$1.00 for each day such item is subject to this Lease.

All payments provided for in this Lease to be made to Lessor shall be made to Lessor at its address set forth above or at such other place as Lessor shall specify to Lessee in writing.

SECTION 4. Numbering and Identification Marks. At or before delivery of each item of Equipment to Lessee, it will be numbered with the car number specified in Schedule A hereto. Without the express written consent of Lessor, Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership thereof, or change or permit

to be changed the identifying road numbers thereof (or any numbers which may be substituted as herein provided) except in accordance with a statement of new identifying road numbers to be substituted therefor, which shall have previously been filed with Lessor by Lessee and recorded or filed in each public office where this Lease shall have been recorded or filed; provided, however, that the equipment may be lettered "BNI" or "Burlington Northern", or may be lettered in some other appropriate manner for convenience of identification of Lessee's interest therein.

SECTION 5. Taxes. Lessee agrees that the payments provided herein will be free of expense to Lessor with respect to the amount of any local, state or federal taxes (other than income, gross receipts except gross receipts taxes in the nature of or in lieu of sales taxes⁷, excess profits and similar taxes), license fees, fines or penalties hereafter levied or imposed upon, or measured by, this Lease or any use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and license fees, fines and penalties Lessee assumes and agrees to pay on demand in addition to other payments provided herein. Lessee will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Lessor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and

assessments which might in any way affect the title of Lessor or result in a lien upon any unit of the Equipment; provided, however, that Lessee shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of Lessor, adversely affect the property or rights of Lessor hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against Lessor directly and paid, Lessee shall reimburse Lessor on presentation of invoices therefor and any sums so paid by Lessor shall be secured by and under this Agreement; provided, however, that Lessee shall not be obligated to reimburse Lessor for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for Lessor), or unless Lessee shall have approved the payment thereof.

In the event that during the continuance of this Lease Lessee becomes liable for the payment or reimbursement of any amounts pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of the term of this Lease, until all such amounts are paid or reimbursed by Lessee.

SECTION 6. Compliance With Laws and Rules; Maintenance;

Indemnification. Lessee agrees, at its expense, to comply with all applicable laws, regulations, requirements and rules with respect to the possession, use, maintenance and operation of each item of Equipment.

Lessee agrees that, at its own expense, it will maintain and keep each item of Equipment in good order and repair, ordinary wear and tear excepted.

Lessee agrees to pay and to protect, indemnify and save harmless Lessor from and against any and all liabilities, damages, expenses (including without limitation reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever arising or accruing during the term of this Lease from (x) injury to persons or property growing out of or connected with the ownership or use of the Equipment or resulting from the condition thereof or (y) violation of any agreement or condition of this Lease to be performed by Lessee or of conditions, agreements, restrictions, laws, ordinances or regulations affecting the Equipment or the ownership or use thereof. The indemnities contained in this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel

fees, in any manner imposed upon or accruing against Lessor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material which infringes or is claimed to infringe on any patent or other right. Lessor agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to Lessee every claim, right and cause of action which Lessor has or hereafter shall have against the originator of any design or against the seller or sellers of any designs, processes, combinations, articles or materials for use in or about the construction or operation of any of the Equipment on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Lessor further agrees to execute and deliver to Lessee all and every such further assurance as may be reasonably requested by Lessee more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Lessor will give notice to Lessee of any claim known to Lessor from which liability may be charged against Lessee hereunder. Said covenants of indemnity shall survive the termination of this Lease in any manner.

SECTION 7. Return of the Equipment; Assignments; Use. Upon the termination of this Lease with respect to any

item of Equipment (unless such termination shall have occurred in connection with the sale of such item to the Trustee of Burlington Northern Inc. Equipment Trust, Series 1, Lessee shall at its expense forthwith deliver possession of such item of Equipment to Lessor in good order and repair, ordinary wear and tear excepted, at such location as Lessor and Lessee may agree. In the event that any item of Equipment shall be lost, destroyed, requisitioned or irreparably damaged during the term of this Lease, Lessee shall pay to Lessor, in respect of such item of Equipment, as damages in lieu of any further claim of Lessor to or on account of such item of Equipment, an amount equal to the cost of such item of Equipment as set forth on Schedule A hereto, and thereupon ownership of such item of Equipment shall be vested in Lessee and Lessee shall be entitled to any payments made or to be made by any person in connection with such item of Equipment or its loss, destruction, requisition or irreparable damage.

So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, Lessee, or over which it has trackage rights, and such Equipment may be used also upon connecting and other carriers in the usual interchange of

traffic, but subject to the terms of this Lease. Lessee shall not acquire title or any other interest in the Equipment except as specified herein. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the items of Equipment. Lessee may not sublease any of the items of Equipment to any other person, firm or corporation. Except as hereinabove provided, this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

SECTION 8. Recording. Lessee, at its sole expense, shall cause this Lease to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, Lessee shall do such other acts as may be required by law, or reasonably requested by Lessor, for the purpose of proper protection, to the satisfaction of Lessor, of its title to the Equipment, or for the purpose of carrying out the intention of this Lease.


SECTION 9. Execution in Counterparts. This Lease and any supplement hereto may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, pursuant to due corporate authority, have caused this Lease to be executed

in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

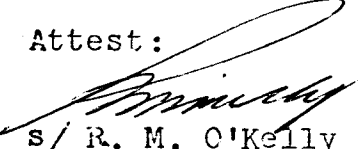
(Corporate Seal)

Attest:

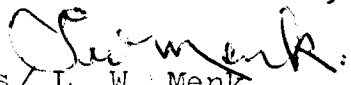

s/ Floyd A. Deming
Secretary

(Corporate Seal)

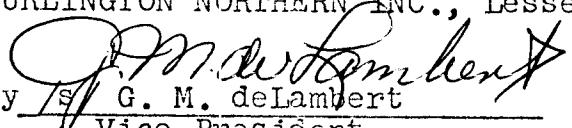
Attest:


s/ R. M. O'Kelly
Secretary

CUYUNA REALTY COMPANY, Lessor

By 
/s/ L. W. Menk
President


BURLINGTON NORTHERN INC., Lessee

By 
/s/ G. M. deLambert
Vice President

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss

On this 15th day of July, 1970, before me personally appeared L. W. Menk to me personally known, who, being by me duly sworn, says that he is President of Cuyuna Realty Company that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

(Notarial Seal)



/s/ Richard J. Woulfe

Richard J. Woulfe,
Notary Public, Ramsey County, Minn.
My Commission Expires April 30, 1977

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss

On this 15th day of July, 1970, before me personally appeared G. M. deLambert to me personally known, who being by me duly sworn, says that he is a Vice President of Burlington Northern Inc. that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

(Notarial Seal)


/s/ Richard J. Woulfe

Richard J. Woulfe,
Notary Public, Ramsey County, Minn.
My Commission Expires April 30, 1977

SCHEDULE "A"

RAILROAD EQUIPMENT LEASE dated as of July 15, 1970
between Cuyuna Realty Company and Burlington Northern Inc.

- 100 70-ton 50'6" sliding sill boxcars with load dividers, Berwick Forge and Fabricating Corporation, Builder, Burlington Northern Road Nos. 319500 to 319599, inclusive.
- 200 100-ton 4,600 cu. ft. capacity, center flow covered hopper cars, ACF Industries, Incorporated, Builder, Burlington Northern Road Nos. 455800 to 455999, inclusive.
- 50 70-ton sliding sill boxcars with load dividers and side fillers, Berwick Forge and Fabricating Corporation, Builder, Burlington Northern Road Nos. 319600 to 319649, inclusive.
- 250 100-ton 4,650 cu. ft. capacity, center flow covered hopper cars, ACF Industries, Incorporated, Builder, Burlington Northern Road Nos. 455200 to 455449, inclusive.